CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	v	Force		Discourt.	U.S.
Nora Chanko		Squad #3	201610511		Abuse	П	O.L.	☐ Injury
		1						
Incident Date(s)		Location of Incident:		F	Precinct:	18	Mo. SOL	EO SOL
Tuesday, 12/20/2016 4:55 PM		144th Place and Arche	r Avenue		103	6/	20/2018	6/20/2018
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	ived at CCI	RB
Tue, 12/20/2016 6:26 PM		IAB Phone Tue		Tue, 12/27	7/2016	5 1:18 PM		
Complainant/Victim	Туре	Home Addre	ess		•			
Subject Officer(s)	Shield	TaxID	Command					
1. SGT Mark Sinatra	04720	944174	NARCBQS					
2. DT3 Victor Rosario	06261	937436	NARCBQS					
3. POM Derrick Coleman	22912	950219	NARCBQS					
4. SGT John Gherardi	4028	945755	103 PCT					
Witness Officer(s)	Shield N	Tax No	Cmd Name					
1. POM John Quinn	15271	951097	103 PCT					
2. POM Alex Schneider	03565	961259	103 PCT					
Officer(s)	Allegation	on			Inve	estiga	tor Recon	nmendation
A.SGT Mark Sinatra	Abuse: S § 87(2)(b)	ergeant Mark Sinatra st and § 87(2)(b)	opped the vehicle in were occupants.		ich			
B.DT3 Victor Rosario	Abuse: I which § 8	Detective Victor Rosario (7(2)(b) and § 87(2)(b)			nts.			
C.POM Derrick Coleman	Abuse: Police Officer Derrick Coleman stopped the vehicle in which stopped and stopped the vehicle were occupants.							
D.SGT Mark Sinatra	Force: Se	ergeant Mark Sinatra po	inted his gun at § 87(2))(b)				
E.SGT Mark Sinatra	Force: Se § 87(2)(b)	ergeant Mark Sinatra use	ed physical force aga	ainst	t			
F.DT3 Victor Rosario	Abuse: I	Detective Victor Rosario	searched § 87(2)(b)					
G.POM Derrick Coleman	Abuse: P	olice Officer Derrick Co	oleman frisked (8 87(2)					
H.POM Derrick Coleman	Abuse: P	olice Officer Derrick Co	oleman searched (b)	2)				
I.SGT John Gherardi		ergeant John Gherardi c complaint regarding offi		b)				

Case Summary filed this complaint with IAB on December 20, 2016. This complaint was received by the CCRB on December 27, 2016, via IAB Log 16-44836. At approximately 4:45 p.m. on December 20, was driving §87(2)(b) a customer, to his destination when he was pulled over by Sgt. Mark Sinatra, Det. Victor Rosario, and PO Derrick Coleman of Narcotics Borough Queens South (Allegations A, B, and C). Sgt. Sinatra approached the driver's seat, pointed his weapon at § 87(2)(b) door, and asked him to get out of the car (Allegation D). \$87(2)(5) refused and Sgt. Sinatra reached into the car and grabbed \$87(2)(b) arm in an attempt to pull him out of the vehicle (Allegation E). Det. Rosario and PO Coleman approached § 87(2)(b) in the back passenger seat and asked him to step out of the vehicle, which he did. Det. Rosario asked \$87(2)(b) to empty his pockets before PO Coleman frisked and searched him (Allegations F, G, and H). All three officers left the scene without issuing any summonses. During this interaction \$87(2)(b) had called 911 because he was not sure whether he had been stopped by officers. \$87(2)(b) left, but \$87(2)(b) remained at the scene and at approximately 6:16 p.m., Sgt. John Gherardi, PO John Quinn, and PO Alex Schneider of the 103rd Precinct arrived. Sgt. Gherardi refused to process \$87(2)(5) complaint against the officers (Allegation **I**). No video footage of this incident was obtained.

(g)

Mediation, Civil and Criminal Histories

- This case was suitable for mediation, but \$87(2)(b) did not wish to mediate \$87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On May 4, 2017, a FOIL confirmed that neither \$87(2)(b) nor \$87(2)(b) had filed any Notices of Claim regarding the incident (01 Board Review).

Civilian and Officer CCRB Histories

- has filed two previous complaints with the CCRB \$87(2)(b)
- Sgt. Sinatra has been a subject in 15 previous cases which resulted in 39 previous allegations being pleaded against him in his 10 year tenure with the NYPD. In case 201013662, which was closed as complainant uncooperative, no vehicle stop allegation was pleaded, though a vehicle stop was conducted by Sgt. Sinatra in regard to a moving violation which the civilian denied. In case 201502100, Sgt. Sinatra was the subject of a vehicle stop allegation, which was exonerated [87(2)(9)

In case 201506484, Sgt. Sinatra was the subject of another vehicle stop allegation, which was unsubstantiated. In this case Sgt. Sinatra also stated that the vehicle failed to signal. The vehicle search and refusal to provide name and shield number allegations in this case were substantiated, with Command Discipline B recommended by the Board. The

Page 2

NYPD disposition of the refusal of name and shield allegation was also Command Discipline B, but there was no penalty. The NYPD disposition of the vehicle search allegation was "No disciplinary action – DUP," and no penalty was imposed. Case 201506493 contained an allegation of a vehicle stop which was exonerated. One of the civilians in this case stated that they were told they were stopped because of a stolen vehicle. The force, vehicle search, property damage, refusal to provide name and shield number, and search of person allegations were substantiated. The CCRB recommended charges, but no NYPD disposition or penalty is noted. Case 201601511 contains an allegation of a vehicle stop, which was closed as complainant uncooperative. In this case, one officer told the civilian that the vehicle was stopped because they did not have any brake lights, and another officer explained that they were stopped because an elderly lady had been robbed. A Stop Report, or UF-250, was also prepared for criminal possession of a weapon regarding a possible knife. In case 201601667, Sgt. Sinatra was the subject of a physical force allegation that was substantiated and for which charges were recommended, and was cited for providing a false official statement. No NYPD disposition or penalties are noted for these allegations. In case 201601919, a vehicle stop allegation was pleaded against Sgt. Sinatra, who alleged that the vehicle failed to signal; the allegation was unsubstantiated. Cases 201607151 and 201609062 are pending Board review; § 87(2)(g)

Det. Rosario has been a subject in three previous CCRB cases, resulting in 12 allegations being pleaded against him throughout his 12 year tenure with the NYPD. In case 201111384 a stop allegation was substantiated and Command Discipline was recommended, however, the NYPD disposition was "No disciplinary action – SOL," and no penalty was imposed. A search of person allegation in this case was unsubstantiated, \$87(2)(9)

No other allegations were substantiated \$87(2)(9)

- PO Coleman has been a subject in three previous cases resulting in six allegations being pleaded against him during his five year tenure with the NYPD. In case 201506705 a vehicle stop allegation was unsubstantiated \$87(2)(9)

 887(2)(9). \$87(4-5)
 - other allegations were substantiated § 87(2)(g)

• Sgt. Gherardi has been the subject officer in one case, resulting in one allegation pleaded against him in his nine year tenure with the NYPD. This allegation \$87(2)(9) was not substantiated.

Potential Issues

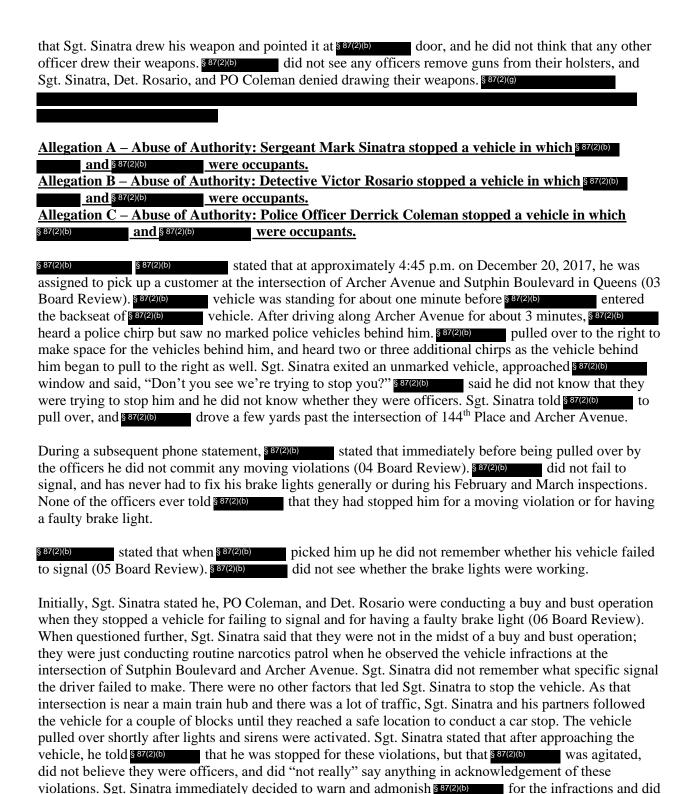
did not provide a verified statement to the investigation. 887(2)(b) who resides in Sloatsburg, New York, did not wish to schedule an interview at the CCRB, and provided a telephone statement. Three subsequent calls were placed to 887(2)(b) to inquire whether he would send a notarized statement to the investigation, but he did not respond. After officer interviews were conducted, subsequent calls were placed to 887(2)(b) and he provided additional details about the complaint, but no verified statement.

Findings and Recommendations

Allegations Not Pleaded

• Force and Abuse of Authority: \$87(2)(5) stated during a phone statement that all three of the officers who stopped him drew and pointed their weapons. However, in his CCRB interview, \$87(2)(5) stated

Page 3



Page 4

not prepare any summonses. Sgt. Sinatra's memo book entry notes the reason for the stop as "Fail to signal/Brakelight." (07 Board Review).

PO Coleman, who was the driver of the vehicle, corroborated Sgt. Sinatra's statement with the added detail that he observed a four door sedan fail to signal that it pulled to the side to pick someone up (08 Board Review). PO Coleman's memo book entry notes the reason for the stop as "Fail to signal." (09 Board Review).

Det. Rosario was sitting in the back seat on the passenger's side of the vehicle when PO Coleman observed a vehicle violation (10 Board Review). Det. Rosario did not know what violation PO Coleman observed and did not observe the vehicle commit any violations. There was no discussion regarding the violations. Det. Rosario's memo book entry does not note any reason for the stop (12 Board Review).

Allegation D – Force: Sergeant Mark Sinatra pointed his gun at \$87(2)(b) Allegation E – Force: Sergeant Mark Sinatra used physical force against \$87(2)(b)
Anegation E – Porce. Sergeant Wark Smatra used physical force against 300-70
stated that after he pulled over, Sgt. Sinatra approached his window, and Det. Rosario and PO Coleman approached the passenger's side of the vehicle (03 Board Review). Sgt. Sinatra attempted to get out of the vehicle by instructing him to get out numerous times, trying to open the door, and then grabbing his arm, but \$87(2)(b) refused. One of the officers who approached on the passenger's side was also yelling at \$87(2)(b) to get out of the car. \$37(2)(b) called 911 to report that people were robbing his car because he did not know that they were police officers. At some point Sgt. Sinatra took his gun out of its holster and angled it towards the front driver's side door of \$87(2)(b) vehicle. \$17(2)(c) vehicle. \$17(2)(d) vehi
During a phone statement taken before statement taken before interview, he first said that all of the officers had their guns pointed, but he later said that only an officer on the passenger's side drew his weapon (12 Board Review). consistently stated that Sgt. Sinatra reached in through his window and grabbed his arm in an attempt to pull him out of the car. During his calls to 911, say(2)(b) says numerous times that the people who stopped him have guns "on them" and "have guns in the side," but he does not say whether the guns were drawn or pointed anywhere (13, 14, and 15 Board Review).

Page 5

stated that he did not hear or notice any interaction that may have happened between an officer and \$87(2)(b) and did not see any officers remove the guns from their holsters (16 Board Review).
Sgt. Sinatra stated that he approached window and told him that he was a police officer, showed him his shield, and provided his name (06 Board Review). Sgt. Sinatra said that said that can did not make any complaints to him, but called 911. Sgt. Sinatra did not know what said to 911, but it came over the radio that a male was stopped by persons he did not believe to be police, and Sgt. Sinatra immediately went over the radio and said that it was his stop. Sgt. Sinatra did not remember telling 911 that the people who stopped him had drawn their guns or pointed their guns at him. Sgt. Sinatra denied taking his gun out of his holster. Sgt. Sinatra denied ever asking said to step out of the car, and denied entering the vehicle.
Both PO Coleman and Det. Rosario said that Sgt. Sinatra did not take his weapon out of his holster (08 and 10 Board Review). Det. Rosario stated that his gun was on his waist and was sticking out during the incident, but he never removed it from his holster. Neither PO Coleman nor Sgt. Sinatra knew the nature of Sgt. Sinatra's interaction with 887(2)(5) and neither became aware that Sgt. Sinatra attempted to pull 887(2)(5) out of the vehicle by grabbing his arm.
Officers may request that a driver of a vehicle stopped for a traffic violation exit the vehicle regardless of whether they have particularized reason for believing that the driver has a weapon (<u>People v. Robinson</u> , 74 N.Y.2d 773 (1989)) (25, Board Review).
§ 87(2)(g)
§ 87(2)(g)
Allegation F – Abuse of Authority: Detective Victor Rosario searched Allegation G – Abuse of Authority: Police Officer Derrick Coleman frisked Allegation H – Abuse of Authority: Police Officer Derrick Coleman searched 887(2)(5)
stated that while Sgt. Sinatra was asking him to get out of the vehicle, \$87(2)(b) exited the vehicle and stood with either PO Coleman or Det. Rosario near the rear of the vehicle on the passenger's side (03 Board Review). \$87(2)(b) saw someone taking items out of \$87(2)(b) s backpack in the passenger's side mirror, but did not see whether an officer did it or whether the officer asked \$87(2)(b) to do it. \$87(2)(b) did not see whether the officers touched \$87(2)(b) s person. Page 6

was out of the car for five minutes before getting back into the vehicle. \$87(2)(b) told him that he saw the officers search him and he did not know what was going on \$87(2)(b) said there was nothing going on but that they searched his bag and they did not find anything. \$87(2)(b) left because \$87(2)(b) had called 911 and was going to remain there.
stated that Det. Rosario told him to get out of the vehicle, which he did (16 Board Review). Det. Rosario asked if they could search \$87(2)(b) and said that there was a robbery around the area and \$87(2)(b) was told to empty his pockets, take his bag off, and unzip his jacket. \$87(2)(b) took his phone, a lighter, a pack of cigarettes and his wallet out of his pockets, gave an officer his bag, and unzipped his jacket. Det. Rosario asked \$87(2)(b) if he had anything sharp that would poke them, and said he did not. A second officer, identified as PO Coleman, ran his hands over his pants and jacket pockets, his legs, ankles, and upper body over his coat. PO Coleman did not put his hands inside \$87(2)(b) is jacket or feel any objects while patting \$87(2)(b) down because he had taken everything out of his pockets and he did not have anything else on his person. PO Coleman took the clothes out of \$87(2)(b) is bag, but did not find anything. The officers gave \$87(2)(b) is bag back and said they could go, then returned to their vehicle.
During a subsequent phone statement, \$87(2)(b) said that he did not have any kind of knife on him during the incident (05 Board Review). \$87(2)(b) also said that Det. Rosario asked for his ID, which he provided.
PO Coleman stated that he observed in the backseat; he appeared to have a knife hanging out of his right front pants pocket that he suspected was an illegal gravity knife (08 Board Review). Initially, he did not know what kind of knife it was, but he saw the clip and top inch or two of the knife which, based on his training and experience, led him to believe it was a gravity knife. PO Coleman clarified that after inspecting the knife, he determined that it was not a gravity knife but actually a pocket knife, which gravity knives look like. PO Coleman did not observe make any movements, did not observe any other bulges on his person, and did not suspect him to have any other contraband or narcotics. PO Coleman asked (SO(2)) to step out of the car, which he did, then told him not to move his hands. PO Coleman removed the knife from his pocket by pulling the part that was sticking up, which he could do without entering his pocket. After PO Coleman removed the knife, he patted down the pocket to make sure that there was nothing else in there. PO Coleman stated that after the knife was removed, there was still a bulge or outline as if something was still there from the knife being there for some time. PO Coleman did not feel anything else. PO Coleman did not pat down any other areas of the passenger's person, did not enter his pockets, search him, or ask to search him. After determining that it was a legal knife, PO Coleman warned and admonished (SO(2)) to keep the knife in his bag or somewhere that is not in plain view. PO Coleman asked (SO(2)) for his information, but he refused to provide it. PO Coleman did not remember whether the passenger had a bag, and did not see any bags be searched. PO Coleman did not remember looking for any suspects involved in a robbery, but noted that there are a lot of robberies in the area. PO Coleman did not remember if the passenger matched any description that he was aware of.

Det. Rosario largely corroborated PO Coleman's statement, with some additional details (10 Board Review). Det. Rosario said he did not speak to \$887(2)(5) at all during the incident. Det. Rosario did

Page 7

not remember whether PO Coleman touched ser(2)(b) s person, and said that ser(2)(b) was not frisked while he was present.
Sgt. Sinatra believed that [887(2)(b)] was frisked, but did not know who frisked him, where he was frisked, or see the frisk, and did not know whether [887(2)(b)] was searched (06 Board Review).
The UF-250 prepared by PO Coleman and approved by Sgt. Sinatra, notes the only reason for \$37(2)(5) as frisk as an observed object suspected of being a weapon (24 Board Review). The report notes that \$87(2)(5) was not searched.
An officer may seize a knife when engaged in a lawful common law inquiry, even if the officer has no reasonable suspicion to believe that the knife observed is a gravity knife (People v. Miranda, 19. A.D.3d 912 (2012)) (17 Board Review). Carrying or wearing knives in plain view outside of people's clothing is prohibited in New York City (18 Board Review). When a vehicle is stopped for a violation of vehicle and traffic law, an officer may frisk a bulge observed on a passenger's person when they reasonably suspect the person to be armed and dangerous (People v. Carver, 41 Misc. 3d 853 (2013)) (23 Board Review). Even when officers are permitted to conduct a frisk of a passenger in a vehicle stopped for a traffic violation, they are not entitled to ask the passenger to empty their pockets (People v. Lipscomb, 179 A.D.2d 1043 (1992)) (26 Board Review). Officers must have founded suspicion that criminality is afoot in order to request for consent to search a passenger, and once consent is provided, the scope of the search must be limited to what a typical reasonable person would have understood from the exchange between the officer and the individual (People v. Williams, 300 A.D.2d 684 (2002)) (27 Board Review) (People v. Gomez, 5 N.Y.3d 416 (2005) (28 Board Review).
§ 87(2)(g)
§ 87(2)(g)

Page 8

§ 87(2)(g)
•
Allegation I – Abuse of Authority: Sergeant John Gherardi did not process sar(2)(5) complaint regarding officers.
stated that he remained in his vehicle at the location for the next three to three and a half hours and called 911 two additional times (03 Board Review). Sgt. Gherardi, PO Quinn, and PO Schneider later arrived. Sgt. Gherardi asked \$87(2)(b) what the emergency was, and \$87(2)(b) explained that he was pulled over by three people who were not in uniform and did not tell him why he was stopped. Sgt. Gherardi provided several possible explanations for why the officers had stopped \$37(2)(b) but \$87(2)(b) believed that Sgt. Gherardi was trying to protect his officers. \$37(2)(b) said he wanted to file a police report, and Sgt. Gherardi said that he did not need a police report because the people who stopped him were officers. \$37(2)(b) later said that Sgt. Gherardi did not provide any explanation as to why he would not complete a report. \$37(2)(b) did not explain that he wanted to file a report because of the officers' conduct during the stop. \$37(2)(b) did not want to continue the argument and said that the officers could go because he was going to call 911. All three officers left the scene and \$37(2)(b) called 911 again to say that the officers refused to take his complaint. The person he spoke to asked if he wanted the same officers to come back, and \$37(2)(b) said he did not want that, and wanted to file a CCRB complaint.
During a subsequent phone statement, \$\frac{87(2)(b)}{2}\$ stated that Sgt. Gherardi told him he was not going to get a police report or a complaint and did not offer to take a complaint (22 Board Review). After Sgt. Gherardi told \$\frac{87(2)(b)}{2}\$ that the people who stopped him were officers, \$\frac{87(2)(b)}{2}\$ continued to say that he wanted to file a complaint, and the sergeant said no. \$\frac{87(2)(b)}{2}\$ said he believed he responded that he was going to call the CCRB or something like that. Before that no officers had said anything about the CCRB.
Sgt. Gherardi stated that when he responded to the scene he informed \$87(2)(6) that he had been stopped by officers, and provided several possible explanations. Sgt. Gherardi stated that, to his recollection, \$87(2)(6) did not have any complaints about the officers' conduct. Sgt. Gherardi did not recall whether \$87(2)(6) stated that he wanted to file a complaint, but stated that he explained how \$87(2)(6) the could call 311, file it on the website, or come back to the precinct because he did not have the form on him. Sgt. Gherardi also had the other number in his phone but \$87(2)(6) the could call 311, file it on the website. To Sgt. Gherardi's recollection, \$87(2)(6) the could call 311, file it on the stated that he options provided by Sgt. Gherardi. To Sgt. Gherardi's recollection, \$87(2)(6) the said he had the number to call, got into his car and left. Sgt. Gherardi estimated that the interaction had lasted for five to ten minutes.
PO Quinn largely corroborated Sgt. Gherardi's statement and said that Sgt. Gherardi told \$87(2)(6)

how to file the complaint, but did not remember what specifically he said (20 Board Review).

PO Schneider stated that after they arrived at the scene, Sgt. Gherardi and §87(2)(b) had a conversation and §87(2)(6) was talking about making a complaint (21 Board Review). Sgt. Gherardi said that he would take the complaint and turned around to PO Schneider to get the paperwork or make a phone call. said no, he did not want to do that, and he had the number and would call to make the

Page 9

§ 87(2)(g)				
Squad: 3				
Investigator: _	Signature	Print	 Date	
Squad Leader: _		Print	Date	
Reviewer:	Title/Signature	rint	Date	
_	Title/Signature	Print	Date	

complaint. § 87(2)(b) said he was just voicing his unhappiness to the officers. Sgt. Gherardi continued speaking to the civilian for a minute or two and tried to calm him down before they left the scene.

Page 10